

FILED: KINGS COUNTY CLERK 01/28/2017 05:56 PM

NYSCEF DOC. NO. 1

INDEX NO. 501846/2017

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Index No:
Date Filed:

-----X
LEVON WALKER,

Plaintiff,

Plaintiff designates
KINGS COUNTY
as the place of trial

-against-

The basis of the venue is:
Place where the cause of
action arose

SUMMONS

THE CITY OF NEW YORK, POLICE OFFICER
WILLIAM SCHUMACHER (Tax # 949640)
and POLICE OFFICERS JOHN DOE 1-10,

The plaintiff resides at:
Kings County, New York

Defendants.

-----X
To the above named defendant(s):

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's Attorney within twenty days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear, judgment will be taken against you by default for the relief demanded in the complaint set forth below.

Dated: Brooklyn, New York
January 28, 2017

Yours, etc.

LAW OFFICES OF WALE MOSAKU, F.C.

BY: WALE MOSAKU
Attorney for the Plaintiff
25 Bond Street, 3rd Floor
Brooklyn, New York 11201
(718) 243-0994

THE CITY OF NEW YORK
C/O New York City Corporation Counsel
100 Church Street
New York, N.Y. 10007

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X Index No.
LEVON WALKER,

Plaintiff,

-against-

COMPLAINT

THE CITY OF NEW YORK, POLICE OFFICER
WILLIAM SCHUMACHER (Tax # 949640)
and POLICE OFFICERS JOHN DOE 1-10,

Defendants,

-----X
LEVON WALKER (hereinafter "plaintiff"), by his attorney(s) THE LAW OFFICES OF
WALE MOSAKU, P.C., complaining of the defendants THE CITY OF NEW YORK,
POLICE OFFICER WILLIAM SCHUMACHER (Tax # 949640) and POLICE
OFFICERS JOHN DOE 1-10 (collectively referred to as "the defendants"), upon
information and well founded belief, alleges as follows:

NATURE OF THE ACTION

1. This is an action at law to redress the deprivation of rights secured to the plaintiff under color of statute, ordinance, regulation, custom; and/or to redress the deprivation of rights, privileges, and immunities secured to the plaintiff by the Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States; and by Title 42 U.S.C. §§ 1982, 1983 and 1985; and arising under the laws and statutes of the City and/or State of New York.

THE PARTIES

2. The plaintiff is a resident of the City of New York, who resides in Kings County, City and State of New York. Plaintiff is an African-American male of full age.
3. At all relevant times, defendants POLICE OFFICER WILLIAM SCHUMACHER (Tax # 949640) and POLICE OFFICERS JOHN DOE 1-10 of the New York City Police Department (hereinafter

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- "defendant officers"), upon information and belief, were and still are law enforcement officers in the employ of the police department of the City of New York (hereinafter "NYPD").
4. At all times herein, the defendant officers were employed as law enforcement officers of the City of New York, State of New York, and were acting under the color of their official capacity, and their acts were performed under color of the statutes and ordinances of the City of New York and/or the State of New York. The defendant officers were the servants, agents, and employees of their co-defendant, the City of New York, so that their acts are imputed to the City of New York and the NYPD.
 5. At all relevant times, the defendant City of New York was/is a municipal corporation of the State of New York, and was/is the employer of the defendant officer, through its Police Department, namely NYPD, and the actions of the defendant officer complained of herein were done as part of the custom, practice, usage, regulation and/or direction of the City of New York.
 6. The plaintiff sues all defendants in their individual and official capacities.

SATISFACTION OF THE PROCEDURAL PREREQUISITES FOR SUIT

7. All conditions precedent to filing of this action have been complied with; on March 24, 2016, within ninety days after the claim(s) alleged in this complaint arose, a written notice of claim, sworn to by the plaintiff and/or his representative, was served upon the defendant City of New York by personal delivery of the notice in duplicate, to the person designated by law as one to whom a summons issued against such party may be delivered in an action in the applicable Courts. Plaintiff's claim was assigned Claim No. 2016PI01311.
8. At least thirty days have elapsed since the service of the above-mentioned notice of claim, and adjustment or payment of the claim has been neglected or refused.

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This action, pursuant to New York State and City Law, has been commenced within one year after the happening of the event upon which the malicious prosecution claim is based.

FACTUAL ALLEGATIONS

- 9. On or about January 28, 2016, at approximately 11:30 p.m., the plaintiff was unlawfully arrested by the defendant officers on the sidewalk in front of the premises known as 666 Vermont Street, Brooklyn, New York ("subject location").
- 10. Following the arrest of the plaintiff, defendant officer William Schumacher ("Schumacher") filed a criminal complaint in Kings County Criminal Court (Docket # 2016KN005340), wherein he accused the plaintiff of having committed, the following crimes/offenses:
 - a. Disorderly conduct [P.L. 240.20(1)];
 - b. Unlawful Possession of Marihuana [P.L. 221.05]; and
 - c. Consumption of Alcohol in Public [AC 10-125(B)]
- 11. The plaintiff did not commit any of the above-referenced offenses.
- 12. Upon arraignment, the plaintiff pled "*not guilty*". The matter was adjourned in contemplation of dismissal¹.
- 13. The plaintiff was released from custody at approximately 10:00 a.m. on January 30, 2016.
- 14. At the time of the plaintiff's arrest, the defendant officers assaulted and battered the plaintiff by forcefully handcuffing the plaintiff against his will and without his consent, causing the plaintiff to suffer bruising, lacerations, pain and discomfort.

CAUSE(S) OF ACTION: FALSE ARREST AND FALSE IMPRISONMENT UNDER 42 U.S.C § 1983/NEW YORK STATE LAW

- 15. By this reference, the plaintiff incorporates each and every allegation and averment set forth in paragraphs 1 through 14 of this complaint as though fully set forth herein.

¹ And was be dismissed on 07/29/2016.

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- 16. The above-described respective arrest, detention and imprisonment of the plaintiff were without just or probable cause and without any warrant or legal process directing or authorizing the plaintiff's arrest or subsequent detention.
- 17. As a result of plaintiff's above-described false arrest and detention, he has been caused to suffer humiliation, great mental and physical anguish, embarrassment and scorn among those who know him, was prevented from attending to his necessary affairs, and has been caused to incur legal expenses, and has been otherwise damaged in his character and reputation.
- 18. Consequently, the plaintiff has been damaged and hereby demands compensatory and punitive damages in an amount to be proven at trial against each of the defendant officers, individually and severally.
- 19. The defendant officers were at all material times acting within the scope of their employment, and as such, the defendant City is vicariously liable for the defendant officers acts as described above.
- 20. This action falls within one or more of the exceptions of the New York State Civil Practice Law and Rules §1602.

CAUSE(S) OF ACTION: DENIAL OF A CONSTITUTIONAL RIGHT TO A
FAIR TRIAL UNDER 42 U.S.C § 1983 DUE TO THE FABRICATION OF
EVIDENCE

- 21. By this reference, the plaintiff incorporates each and every allegation and averment set forth in paragraphs 1 through 20 of this complaint as though fully set forth herein.
- 22. The defendant officers fabricated evidence and/or created false evidence against the plaintiff.
- 23. The defendant officers forwarded fabricated and false evidence/false information concerning the plaintiff to the prosecutors in the Kings County District Attorney's office.
- 24. The defendant officers misrepresented and falsified evidence against the plaintiff throughout all phases of the criminal proceeding.

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25. The defendant officers misrepresented and falsified evidence against the plaintiff to the prosecutors in the Kings County District Attorney's office.
26. The defendant officers withheld exculpatory evidence from the prosecutors in the Kings County District Attorney's office.
27. The defendant officers did not make a complete statement of facts to the prosecutors in the Kings County District Attorney's office.
28. By creating false evidence against the plaintiff; forwarding false evidence and information to the prosecutors; and by providing false and misleading testimony throughout the criminal proceedings, which directly resulted in the plaintiff being deprived of his liberty, the defendant officers violated against the plaintiff's constitutional right to a fair trial under the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution
29. As a consequence of the defendant officers' actions, the plaintiff suffered loss of liberty, humiliation, mental anguish, depression, loss of wages from work, and his constitutional rights were violated.
30. The plaintiff hereby demands compensatory damages and punitive damages, in an amount to be determined at trial, against each of the defendants, individually and severally.

CAUSE OF ACTION: EXCESSIVE FORCE UNDER 42 U.S.C § 1983

31. By this reference, the plaintiff incorporates each and every allegation and averment set forth in paragraphs 1 through 30 of this complaint as though fully set forth herein.
32. The level of force employed by the defendant officers was objectively unreasonable and in violation of the plaintiff's constitutional rights.
33. As a result of the aforementioned conduct of the defendant officers, the plaintiff was subjected to excessive force, resulting in serious, severe, and permanent physical injuries.

CAUSE OF ACTION: FAILURE TO INTERVENE UNDER 42 U.S.C § 1983

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34. By this reference, the plaintiff incorporates each and every allegation and averment set forth in paragraphs 1 through 33 of this complaint as though fully set forth herein.
35. Each defendant officer had an affirmative duty to intervene on the plaintiff's behalf to prevent the violation to his constitutional rights, as more fully set forth above.
36. Each defendant officer failed to intervene on the plaintiff's behalf to prevent the violation of his constitutional rights, despite having had a realistic and reasonable opportunity to do so.
37. As a consequence of each defendant officer's actions, plaintiff suffered loss of liberty, humiliation, mental anguish, depression, loss of wages from work, and his constitutional rights were violated. Plaintiff hereby demands compensatory damages and punitive damages, in the amount of to be determined at trial, against each of the defendants, individually and severally.
38. The defendant officers were at all material times acting within the scope of their employment, and as such, the defendant City is vicariously liable for the defendant officers acts as described above.
39. This action falls within one or more of the exceptions of the New York State Civil Practice Law and Rules §1602.

CAUSE OF ACTION ON BEHALF OF PLAINTIFF: ASSAULT AND BATTERY

40. Each plaintiff repeats and realleges paragraphs 1 through 39 as if each paragraph is repeated verbatim herein.
41. As set forth above, the defendants assaulted plaintiff, battered plaintiff, and subjected plaintiff to excessive force and summary punishment.
42. The defendants were at all material times acting within the scope of their employment.
43. Consequently, plaintiff has been damaged and hereby demands compensatory and punitive damages in an amount to be proven at trial against the defendants, individually and severally.

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44. The defendants were at all material times acting within the scope of their employment, and as such, the defendant City is vicariously liable for the defendants acts as described above.
45. This action, upon information and belief, falls within one or more of the exceptions of CPLR 1602.

WHEREFORE, plaintiff prays for judgment against the defendants, individually and severally, as follows: for compensatory damages against each defendant in an amount to be proven at trial; for exemplary and punitive damages against each defendant in an amount to be proven at trial; for costs and expenses of suit herein, including plaintiff's reasonable attorney's fees; for pre-judgment and post-judgment interest; all in a sum of money that exceeds the jurisdiction of all lower Courts, and for such other and further relief as this court deems just and appropriate.

Dated: Brooklyn, New York
January 28, 2017

LAW OFFICES OF WALE MOSAKU, P.C.

By: 

Wale Mosaku
Attorney for the Plaintiff
25 Bond Street, 3rd Floor
Brooklyn, N.Y. 11201
(718) 243-0994

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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LEVON WALKER,

Plaintiff,

-against-

ATTORNEY
CERTIFICATION
PURSUANT TO 22 NYCRR
Part 130-1.1(c)

THE CITY OF NEW YORK, POLICE OFFICER
WILLIAM SCHUMACHER (Tax # 949640)
and POLICE OFFICERS JOHN DOE 1-10,

Defendants.

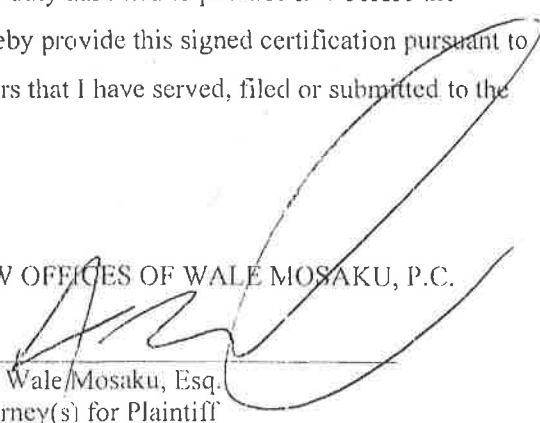
-----X

The undersigned attorney does hereby certify:

That I am the attorney for the plaintiff and duly admitted to practice law before the
Courts of the State of New York. I do hereby provide this signed certification pursuant to
22 NYCRR Part 130-1.1 (c), that the papers that I have served, filed or submitted to the
Court in this action are not frivolous.

Dated: Brooklyn, New York
January 28, 2017

LAW OFFICES OF WALE MOSAKU, P.C.


BY Wale/Mosaku, Esq.
Attorney(s) for Plaintiff
25 Bond Street, 3rd Floor
Brooklyn, New York 11201
(718) 243-0994

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Plaintiff(s),

-against-

THE CITY OF NEW YORK, POLICE OFFICER
WILLIAM SCHUMACHER (Tax # 949640)
and POLICE OFFICERS JOHN DOE 1-10,

Defendant(s).

SUMMONS AND COMPLAINT

LAW OFFICES OF WALE MOSAKU, P.C.
Attorney(s) for Plaintiff(s)
25 Bond Street, 3rd Floor
Brooklyn, New York 11201
(718) 243-0994

To:

Service of a copy of the within
is hereby admitted.

Dated: 201_

Attorney(s) for Defendant(s)